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11 **WESTCHESTER FIRE INSURANCE COMPANY**

12 UNITED STATES DISTRICT COURT

13 NORTHERN DISTRICT OF CALIFORNIA

14 LENSRAFTERS, INC.; and EYEXAM OF )  
15 CALIFORNIA, INC., )

16 Plaintiffs, )

17 vs. )

18 LIBERTY MUTUAL FIRE INSURANCE )  
19 COMPANY; EXECUTIVE RISK SPECIALTY )  
20 INSURANCE COMPANY; UNITED STATES )  
21 FIRE INSURANCE COMPANY; MARKEL )  
22 AMERICAN INSURANCE COMPANY; and )  
23 WESTCHESTER FIRE INSURANCE COMPANY, )

24 Defendants. )

25 AND RELATED COUNTER AND CROSS- )  
26 CLAIMS )  
27 )  
28 )

CASE NO. C-07-2853 SBA

**E-FILING**

**[PROPOSED] ORDER GRANTING  
WESTCHESTER FIRE INSURANCE  
COMPANY'S MOTION TO DISMISS THE  
SECOND AND THIRD CLAIMS FOR  
RELIEF OF PLAINTIFFS' FIRST  
AMENDED COMPLAINT  
[F.R.C.P. Rule 12(b)(6)]**

Date: January 29, 2008

Time: 1:00 p.m.

Courtroom: 3

The Hon. Sandra Brown Armstrong

1 Defendant, Westchester Fire Insurance Company's Motion to Dismiss the Second and Third Claims  
2 for Relief of Plaintiffs' First Amended Complaint came on regularly for hearing on January 29, 2008. Upon  
3 consideration of the moving papers, opposition and reply thereto, the Motion is GRANTED on the grounds  
4 that the Second and Third Claims for Relief fail to state a claim upon which relief can be granted. Therefore,

5 IT IS ORDERED THAT the Second and Third Claims for Relief of Plaintiffs' First Amended  
6 Complaint are DISMISSED.

7  
8 Dated: \_\_\_\_\_

9 SAUNDRA BROWN ARMSTRONG  
10 UNITED STATES DISTRICT JUDGE  
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**PROOF OF SERVICE**

I, SHIRLEY AOKI, am employed in the aforesaid county, State of California: I am over the age of 18 years and not a party to the within action: my business address is 5959 West Century Boulevard, Suite 1100, Los Angeles, California 90045.

On October 19, 2007, I served the following document described as:

**[PROPOSED] ORDER GRANTING WESTCHESTER FIRE INSURANCE COMPANY'S  
MOTION TO DISMISS THE SECOND AND THIRD CLAIMS FOR RELIEF OF PLAINTIFFS'  
FIRST AMENDED COMPLAINT  
[F.R.C.P. Rule 12(b)(6)]**

**VIA THE UNITED STATES DISTRICT COURT ELECTRONIC FILING SERVICE** on interested parties in this action set forth below:

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Attorney for Defendant,  
Markel American Insurance Company

Executed on October 19, 2007, at Los Angeles, California. I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

  
SHIRLEY AOKI